

² 5 U.S.C. § 8101 *et seq.*

ISSUE

The issue is whether appellant has met her burden of proof to establish a recurrence of her medical condition beginning in December 2015 causally related to her accepted employment injury.

On appeal, counsel contends that OWCP improperly terminated appellant's authorization for medical benefits without establishing that she no longer had residuals of her work injury. She asserts that its action in administratively closing cases was a method for terminating medical benefits. Counsel cites to *Sandra Jones*,³ and contends that OWCP erred in placing the burden of proof on appellant to file a notice of recurrence (Form CA-2a) to establish her entitlement to continuing medical treatment. She further cites to *Samuel D. Harrell, Jr.*,⁴ and contends that administrative closure of a case by OWCP does not shift the burden of proof to appellant.

FACTUAL HISTORY

On September 13, 1999 appellant, then a 62-year-old maintenance mechanic, filed an occupational disease claim (Form CA-2) alleging that on August 30, 1999 she first became aware of her knee pain and realized that her condition was caused or aggravated by factors of her federal employment. She stopped work on August 30, 1999.

In an undated narrative statement, appellant attributed her claimed knee injury to entering and exiting a vehicle approximately 30 to 50 times a day at work.

In an October 5, 1999 medical report, Dr. Vahdatyar Amirpour, an attending orthopedic surgeon, noted a history of the accepted work injury and discussed diagnostic test results. He provided an impression of recovering right knee sprain. Dr. Amirpour released appellant to return to work on October 11, 1999 and recommended that she wear a knee brace at work for another month. He instructed her to return as needed. In a physician's statement dated October 11, 1999, Dr. Amirpour restated his opinion on appellant's work capacity and her work restriction.

On October 7, 1999 OWCP accepted appellant's claim for right knee sprain.

In an October 12, 1999 attending physician's report (Form CA-20), Dr. Amirpour indicated a date of injury as August 30, 1999 and reiterated his diagnosis of right knee sprain. He indicated by checking a box marked "yes" that the diagnosed condition was caused or aggravated by an employment activity. Dr. Amirpour further indicated that he advised appellant on October 5, 1999 to resume her regular work as of October 11, 1999. He noted that she must wear a knee brace for three weeks.

Appellant returned to work on October 14, 1999.

³ Docket No. 05-1562 (issued March 7, 2006).

⁴ Docket No. 01-1711 (issued March 21, 2002).

Doctor's supplemental reports dated September 5, 2000 bearing an unknown signature noted that appellant was seen on September 2 and 7, 1999. These reports discussed her right knee symptoms and provided a diagnosis of sprain versus torn meniscus of the right knee.

The claim was essentially dormant until 2008 when counsel requested a copy of the claim file. OWCP provided the requested copy on March 2, 2009. Thereafter, the claim was inactive until late 2015.

In a December 4, 2015 letter, counsel on behalf of appellant, requested that OWCP reopen appellant's claim for medical care only to examine her right knee. She noted that the claim was retired on April 13, 2006 and requested an explanation for such action.

In a December 21, 2015 response to Ms. Rivas' December 4, 2015 letter, OWCP advised appellant to file a notice of recurrence (Form CA-2a) so that a claim may be formally reviewed for an additional request for medical treatment.

In a letter dated January 28, 2016, Ms. Rivas refused to file a Form CA-2a. She cited Board precedent and OWCP regulations and contended that requiring appellant to file a claim for recurrence was contrary to law. By letter dated May 2, 2016, Ms. Rivas requested that the Civil Rights Center of the Department of Labor investigate OWCP's denial of appellant's access to FECA benefits.

OWCP retrieved appellant's case record from the Federal Records Center and by letter dated May 20, 2016, it informed her that a recurrence for medical treatment only was defined as a documented need for additional medical treatment after a release from treatment of the work-related injury, or after not receiving care for a significant period of time including circumstances when there had been a significant gap in treatment for the work-related injury. It also informed appellant that to establish a recurrence she must provide evidence to support that her need for treatment was due to a worsening of the accepted work-related condition without intervening cause. OWCP noted that, based on the medical records on file, she was released from medical care for her work-related condition on October 5, 1999 by Dr. Amirpour. It advised appellant that the evidence submitted was insufficient to establish her claim and requested that she provide additional factual and medical evidence, including a physician's rationalized medical opinion explaining how her current medical condition was due to a worsening of her accepted work-related condition without intervening cause. OWCP afforded appellant 30 days to submit the requested information.

In letters dated May 27 and June 15, 2016, counsel reiterated that OWCP had improperly denied appellant access to FECA benefits. She noted that she did not receive the May 20, 2016 development letter. Counsel requested a copy of this letter and Dr. Amirpour's October 5, 1999 report.

On June 24, 2016 OWCP resent the May 20, 2016 recurrence development letter to appellant's counsel. No additional medical evidence was subsequently received.

In a July 29, 2016 decision, OWCP found that appellant had not established a recurrence of a medical condition commencing in December 2015. It noted that she last received medical treatment for her work injury on October 12, 1999.

LEGAL PRECEDENT

The United States shall furnish to an employee who is injured while in the performance of duty the services, appliances, and supplies prescribed or recommended by a qualified physician that the Secretary of Labor considers likely to cure, give relief, reduce the degree or the period of any disability, or aid in lessening the amount of any monthly compensation.⁵

A recurrence of a medical condition means a documented need for further medical treatment after release from treatment for the accepted condition or injury when there is no accompanying work stoppage. Continuous treatment for the original condition or injury is not considered a need for further medical treatment after release from treatment, nor is an examination without treatment.⁶

If a claim for recurrence of medical condition is made more than 90 days after release from medical care, a claimant is responsible for submitting a medical report supporting causal relationship between the employee's current condition and the original injury in order to meet his or her burden of proof.⁷

ANALYSIS

OWCP accepted that appellant sustained a right knee sprain causally related to factors of her federal employment. On October 12, 1999 in the most recent medical report of record, Dr. Amirpour diagnosed work-related right knee sprain and noted that on October 5, 1999 he released appellant to resume her regular work as of October 11, 1999 and required her to wear a right knee brace for three weeks. Appellant returned to work on October 14, 1999.

On December 4, 2015 appellant requested that OWCP reopen her claim for medical examination of her right knee. In a May 20, 2016 development letter, OWCP requested that she file a notice of an employment-related recurrence of a medical condition (Form CA-2a) and submit supporting medical evidence within 30 days. As more than 90 days had passed since appellant's release from medical care, she had the responsibility to submit an attending physician's report containing a description of the objective findings and supporting causal relationship between her current condition and the previously accepted work injury.⁸ Appellant has not submitted such evidence as requested and thus, the Board finds that she has not met her burden of proof to establish her claim.⁹

⁵ 5 U.S.C. § 8103(a).

⁶ 20 C.F.R. § 10.5(y).

⁷ Federal (FECA) Procedure Manual, Part 2 -- Claims, *Recurrences*, Chapter 2.1500.4(b) (June 2013); *see also* J.M., Docket No. 09-2041 (issued May 6, 2010).

⁸ *Id.*

⁹ *See J.F.*, 58 ECAB 124 (2006).

On appeal, counsel contends that OWCP improperly terminated appellant's authorization for medical benefits without establishing that she no longer had residuals of her work injury. She asserts that its action in administratively closing cases was a method for terminating medical benefits. The Board notes, however, that OWCP did not terminate medical benefits for the accepted work-related right knee sprain, but instead found that appellant was not entitled to medical benefits due to a recurrence of a medical condition. OWCP denied appellant's request for medical coverage based on her failure to submit an attending physician's report supporting a causal relationship between the need for further medical treatment commencing in December 2015 and the previously accepted work injury.¹⁰

Counsel maintains on appeal that the Board's findings in *Sandra Jones*¹¹ and *Samuel D. Harrell, Jr.*¹² support her contention that OWCP erred in placing the burden of proof on appellant to establish her entitlement to continuing medical treatment. The issue in *Jones*, however, was whether OWCP abused its discretion in denying a request to change treating physicians without appellant establishing a recurrence of a medical condition. Further, the preliminary issue in *Harrell* was whether OWCP's notice to administratively close appellant's claim constituted a final adverse decision denying her claim for a greater schedule award for bilateral lower extremity impairment. The issue in the present case is whether appellant has established a need for further medical treatment due to a recurrence of her accepted work injury. The issue is medical in nature and can only be resolved through the submission of probative medical evidence from a physician.¹³ As discussed above, appellant has not submitted any medical evidence in support of her recurrence claim.

Appellant may submit new evidence or argument with a written request for reconsideration to OWCP within one year of this merit decision, pursuant to 5 U.S.C. § 8128 and 20 C.F.R. §§ 10.605 through 10.607.

CONCLUSION

The Board finds that appellant has failed to meet her burden of proof to establish a recurrence of her medical condition beginning in December 2015 causally related to her accepted employment injury.

¹⁰ *Id.*

¹¹ *Supra* note 3.

¹² *Supra* note 4.

¹³ *Gloria J. McPherson*, 51 ECAB 441 (2000); *L.G.*, Docket No. 09-1517 (issued March 3, 2010).

ORDER

IT IS HEREBY ORDERED THAT the July 29, 2016 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: June 13, 2017
Washington, DC

Christopher J. Godfrey, Chief Judge
Employees' Compensation Appeals Board

Patricia H. Fitzgerald, Deputy Chief Judge
Employees' Compensation Appeals Board

Valerie D. Evans-Harrell, Alternate Judge
Employees' Compensation Appeals Board